

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference P 42 534 WO	FOR FURTHER ACTION		See item 4 below
International application No. PCT/EP2004/003850	International filing date (<i>day/month/year</i>) 13 April 2004 (13.04.2004)	Priority date (<i>day/month/year</i>) 17 April 2003 (17.04.2003)	
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237			
Applicant AESCULAP AG & CO. KG			

<p>1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).</p> <p>2. This REPORT consists of a total of 8 sheets, including this cover sheet.</p> <p>In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.</p>																
<p>3. This report contains indications relating to the following items:</p> <table> <tr> <td><input checked="" type="checkbox"/> Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input checked="" type="checkbox"/> Box No. II</td> <td>Priority</td> </tr> <tr> <td><input checked="" type="checkbox"/> Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/> Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/> Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input checked="" type="checkbox"/> Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/> Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/> Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/> Box No. I	Basis of the report	<input checked="" type="checkbox"/> Box No. II	Priority	<input checked="" type="checkbox"/> Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/> Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/> Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input checked="" type="checkbox"/> Box No. VI	Certain documents cited	<input type="checkbox"/> Box No. VII	Certain defects in the international application	<input type="checkbox"/> Box No. VIII	Certain observations on the international application
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<p>4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).</p>																

<p>The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland</p> <p>Facsimile No. +41 22 740 14 35</p>	<p>Date of issuance of this report 02 March 2006 (02.03.2006)</p>
	<p>Authorized officer</p> <p>Agnes Wittmann-Regis</p> <p>Telephone No. +41 22 338 89 70</p>

PATENT COOPERATION TREATY

Translation

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:		Date of mailing (day/month/year)
Applicant's or agent's file reference P 42 534 WO		FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/EP2004/003850	International filing date (day/month/year) 13.04.2004	Priority date (day/month/year) 17.04.2003
International Patent Classification (IPC) or both national classification and IPC		
Applicant AESCULAP AG & CO. KG		

<p>1. This opinion contains indications relating to the following items:</p> <table style="width: 100%;"> <tr> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 20%;">Box No. I</td> <td>Basis of the opinion</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>		<input checked="" type="checkbox"/>	Box No. I	Basis of the opinion	<input checked="" type="checkbox"/>	Box No. II	Priority	<input checked="" type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input checked="" type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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<p>2. FURTHER ACTION</p> <p>If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.</p> <p>If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.</p> <p>For further options, see Form PCT/ISA/220.</p>																									
<p>3. For further details, see notes to Form PCT/ISA/220.</p>																									

Name and mailing address of the ISA/EP	Authorized officer
Facsimile No.	Telephone No.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

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Box No. 1 Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language
_____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. II

Priority

1. ☒ The following document has not yet been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date in the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application

☒ claims Nos. 21-23 (i)

because:

☒ the said international application, or the said claims Nos. 21-23

relate to the following subject matter which does not require an international preliminary examination (*specify*):

Claims 21-23 refer to subject matter which, in the opinion of this Authority, comes under PCT Rule 67.1 (iv). Therefore, no opinion is given on the industrial applicability of the subject matter of these claims (PCT Article 34(4) a) (i)).

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____ are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. _____ are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for said claims Nos. _____

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐ has not been furnished

☐ does not comply with the standard

the computer readable form

☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ See Supplemental Box for further details.

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PCT/EP2004/003850

Box No. V

Reasoned statement under Rule 43bis 1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	9-20, 24	YES
	Claims	1-8, 21-23, 25	NO
Inventive step (IS)	Claims	9	YES
	Claims	1-8, 10-25	NO
Industrial applicability (IA)	Claims	1-20, 24, 25	YES
	Claims		NO

2. Citations and explanations:

2. In the present report, reference is made to the following documents:

D1: EP-A-1 424 085 (ETHICON INC) 2 June 2004
(2004-06-02)

D2: DATABASE EMBASE [Online], 2002; OKUYAMA H
ET AL: "Laparoscopic rectopexy for rectal
prolapse in children"

D3: US-A-3 868 955 (SIRAGUSA JUDITH ANN ET AL)
4 March 1975 (1975-03-04)

2.1 Document D1 discloses haemostyptics made from polysaccharides carrying free aldehyde groups. Document D1 is not considered as prior art for the international phase.

2.2 Document D2 discloses oxycellulose as self-adhesive haemostyptic.

2.3 Document D3 discloses polysaccharides carrying aldehyde groups as odour-preventing additive in sanitary articles.

3. The present application does not meet the requirements of PCT Article 33(1), because the subject matter of claims 1-8, 21-23 and 25 does not

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Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

appear novel over document D2 (PCT Article 33(2)).

Reference is made to the fact that the subject matter of claim 25, in addition, does not appear to differ from known polymer solutions carrying aldehyde groups.

4. The present application does not meet the requirements of PCT Article 33(1), because the subject matter of claims 10-20 and 24 is not based on an inventive step (Article 33(3)).

- 4.1 The document D2 is considered the closest prior art to the subject matter of claims 9 and 10 and differs by the polymer used.

In the application, the production of a dextran aldehyde haemostyptic was shown. Since the prior art gives no indication of such solid porous and absorbent haemostyptics, the subject matter of claim 9 appears to be inventive over the documents D2 and D3.

Since there is no indication in the application that the problem can also be solved using the structurally very different polyethylene glycol, the subject matter of claim 10 is not considered as inventive.

- 4.2 The (dependent) claims 11-20 and 24 do not contain any features which, in combination with the features of any claim to which they refer back, meet the PCT requirements for inventive step.

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Box No. VI

Certain documents cited

1. Certain published documents (Rule 43bis.1 and 70.10)

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
EP 1 424 085 A1	02.06.2004	27.06.2003	26.11.2002

2. Non-written disclosures (Rule 43bis.1 and 70.9)

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)
see form 210		